

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-41069-RJK

Chapter 13

Christine Renae Larsen,

Debtor(s).

***NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY***

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TO: Debtor(s) and Attorney for Debtor(s); Michael J Farrell, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **2:00 pm on Thursday, October 7, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than Monday, October 4, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, September 28, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 13 case was filed on March 2, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 1997 Chevrolet Blazer, vehicle identification number 1GNDDT13W7V2182345 (the "Vehicle").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The Chapter 13 Plan requires payments to Wells Fargo Financial Acceptance. The payments are to be made by the Trustee. On information and belief, a delinquency under the Plan exists for the months of June through August 2004 totaling at least \$1,350.00.

9. The balance due under the Contract is \$6,729.76 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$6,800.00. Connie Sue Johnston is a codebtor on the Contract

10. The failure of the Debtor(s) to make payments pursuant to the Chapter 13 Plan or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

11. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

12. If testimony is necessary as to any facts relevant to this motion, A. Hansen, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

13. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Financial Acceptance will repossess the Vehicle promptly upon the Court signing the Order.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order: (i) modifying the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Christine R. Larsen,

Bky. No. 04-41069

Debtor(s).

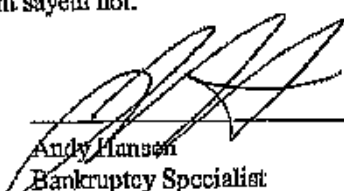
Affidavit of Andy Hansen

I, Andy Hansen, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):  
1997 Chevrolet Blazer VIN# 1GNDT13W7V2182345.
2. \$6,729.76 is the outstanding balance under the contract as of September 13, 2004.
3. \$475.94 is the amount of the existing delinquency under the contract.
4. \$6,800.00 is the fair market value of the Collateral.
5. Yes Appropriate insurance has been verified.
6. 1350.00 is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated: 9/13/2004

  
\_\_\_\_\_  
Andy Hansen  
Bankruptcy Specialist  
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on  
September 13, 2004

  
\_\_\_\_\_  
Notary



44 15:05 763-422-0268

WELLS FARGO ACCEPT

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## NOTE AND SECURITY AGREEMENT (Including Loan Statement)

EXCEPT WHERE SHOWN OTHERWISE, WE USE THE WORDS YOU AND YOUR TO MEAN THE BORROWERS.  
 IF YOU ARE A PARTNER, JOINT TENANT, OR JOINTLY OWNED, WE USE THE WORDS YOU AND YOUR TO MEAN THE BORROWERS.  
 IF YOU ARE A PARTNER, JOINT TENANT, OR JOINTLY OWNED, WE USE THE WORDS YOU AND YOUR TO MEAN THE BORROWERS.

WELLS FARGO FINANCIAL ACCEPTANCE, INC.  
 3200 N.W. HAWK STREET, 2ND  
 DORSET, NH 05548

Borrower's Name RANALL, ROSELA P. CHRISTINE		Borrower's Address 8708 71ST AVENUE CLEAR LAKE, MN 55310		Borrower's Phone 763-422-0268	
Loan Number 018130703	Loan Date 08/16/03	Loan Term 36 Months	Loan Amount \$ 308.67	Interest Rate 10.00%	Monthly Payment \$ 30

**ITEMIZATION OF AMOUNT FINANCED**

1. AMOUNT FINANCED (shown above)	7328.67
2. AMOUNT PAID IN YOUR ACCOUNT	7328.67
3. AMOUNT PAID FOR WAREHOUSE FINANCING	NONE
4. AMOUNT PAID TO YOU DIRECTLY	NONE
5. AMOUNT PAID TO OTHERS ON YOUR BEHALF	NONE
6. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
7. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
8. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
9. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
10. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
11. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
12. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
13. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
14. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
15. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
16. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
17. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
18. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
19. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE
20. AMOUNT PAID TO OTHERS ON YOUR BEHALF (Listed)	NONE

**ANNUAL PERCENTAGE RATE** The Annual Percentage Rate (APR) for this loan is 10.00%.

**FINANCE CHARGE** The Finance Charge for this loan is \$ 308.67.

**AMOUNT FINANCED** The Amount Financed for this loan is \$ 308.67.

**TOTAL PAYMENT** The Total Payment for this loan is \$ 308.67.

**MONTHLY PAYMENT** The Monthly Payment for this loan is \$ 30.

**LOAN TERM** The Loan Term for this loan is 36 Months.

**LOAN DATE** The Loan Date for this loan is 08/16/03.

**LOAN NUMBER** The Loan Number for this loan is 018130703.

**LOAN TYPE** The Loan Type for this loan is 36 Months.

**LOAN PURPOSE** The Loan Purpose for this loan is 36 Months.

**LOAN COLLATERAL** The Loan Collateral for this loan is 36 Months.

**LOAN SECURITY** The Loan Security for this loan is 36 Months.

**LOAN AGREEMENT** The Loan Agreement for this loan is 36 Months.

**LOAN SIGNATURE** The Loan Signature for this loan is 36 Months.

**LOAN DATE** The Loan Date for this loan is 08/16/03.

**LOAN NUMBER** The Loan Number for this loan is 018130703.

**LOAN TYPE** The Loan Type for this loan is 36 Months.

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**LOAN COLLATERAL** The Loan Collateral for this loan is 36 Months.

**LOAN SECURITY** The Loan Security for this loan is 36 Months.

**LOAN AGREEMENT** The Loan Agreement for this loan is 36 Months.

**LOAN SIGNATURE** The Loan Signature for this loan is 36 Months.

**YOUR PROMISE TO PAY AND THE TERMS OF REPAYMENT.** To repay your loan, you promise to pay us the amount shown above as Total of Payments which includes interest at the Annual Rate of Interest Per Year and also includes any other charges shown above in the Itemization of Amount Financed box. You'll pay the Total of Payments to us at our office in installments each month according to the terms of repayment shown directly above.

**RATE OF INTEREST.** The Annual Rate of Interest Per Year is the Annual Percentage Rate shown above. The amount of interest is the Finance Charge shown above. Unless this Note and Security Agreement is converted to an interest-bearing loan, the rate of interest per year after maturity until fully paid is also the Annual Percentage Rate shown above.

**YOU GRANT US A SECURITY INTEREST.** You give us a security interest in your property described below. This property is called collateral. You also give us a security interest in any accessions to and proceeds of the collateral. Accessions are goods that are added to or attached to the collateral. Proceeds are money or property due to you from the loan, disposition or sale of the collateral. You also give us a security interest in any amount due to you under any credit insurance and extended service contract purchased with this loan and listed in the Itemization of Amount Financed, including any refund of unearned premium for the loan term and the charge for the extended service contract. The purpose of this security interest is to protect us if you don't repay your loan described above or if you break any promise made in this Note and Security Agreement.

**THE PARAGRAPHS CHECKED BELOW DESCRIBE THE COLLATERAL COVERED BY THIS NOTE AND SECURITY AGREEMENT:**

☒ (1) All of the household goods and household appliances of every kind now located on the premises shown above, except those items owned by the borrower which are shown in the separate box checked in the paragraph on page 2 of this Note and Security Agreement.

☒ (2) The vehicle shown above as the borrower's registered address indicated above.

☒ (3) Other vehicle(s) described as follows:  
 Year 1997 Make CHEVROLET Model BLAZER Serial Number 1B0T19742102340

I understand that some or all of the above property is normally protected by the law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract.

**ADDITIONAL TERMS.** The additional terms printed on page 2 and 3 are a part of this Note and Security Agreement and you are bound by them in the same manner as if they were printed on page 1 of this Note and Security Agreement.

**SIGNATURES.** If you agree to be bound by the terms of this Note and Security Agreement, please sign your name below. All persons signing this Note and Security Agreement will be fully responsible for paying it in full. By signing below, you are authorizing disbursement of the loan proceeds as shown above in the Itemization of Amount Financed box.

**YOU ACKNOWLEDGE THE EXISTENCE OF A SEPARATE ARBITRATION AGREEMENT SIGNED CONCURRENTLY WITH THIS NOTE AND SECURITY AGREEMENT, AND YOU SPECIFICALLY AGREE TO BE BOUND BY ITS TERMS.**

**COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST**

I, the Collateral Owner, grant a security interest in the property shown above to the lender. To secure the loan, I agree to sign this Note and Security Agreement, and I agree to sign the separate box checked in the paragraph on page 2 of this Note and Security Agreement, and I agree to sign the separate box checked in the paragraph on page 2 of this Note and Security Agreement.

**SIGN HERE** **SIGN HERE**

**SIGN HERE** **SIGN HERE**

Page 09 763-422-0268 08/30/03 ORIGINAL

02/28/2004 15:05

753-422-9260

WELLS FARGO ACCEPT

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
 DRIVER & VEHICLE SERVICES DIVISION  
 105 MINNESOTA ST., ST. PAUL, MN 55101  
 CONFIRMATION OF LIEN PERFECTION - DESTOR NAME AND ADDRESS

First Class  
 US, Priority  
**PAID**  
 Permit No. 171  
 St. Paul, MN

JOHNSTON CONNIE SUE  
 LARSEN CHRISTINE RENAE  
 8705 71ST ST  
 CLEAR LAKE MN 55319

HTK045

1ST SECURED PARTY

**LIEN HOLDER**

Year 97	MAKE CHEV	MODEL 4WDZR	VIN H26T8FD21
1GNDT13WYV21B2345		09/06/02	NO

RETAIN THIS DOCUMENT - See reverse  
 side of this form for completing this item.

WELLS FARGO FINANCIAL  
 3200 NW MAIN ST 250  
 CORN RAPIDS MN 55448-1197

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-41069-RJK

Chapter 13

Christine Renae Larsen,

Debtor(s).

***MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY***

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Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 1997 Chevrolet Blazer with a vehicle identification number 1GNDDT13W7V2182345 (the "Vehicle"). Payments due under the terms of the Chapter 13 Plan totaling \$1,350.00 have not been made by the Debtor(s). The balance due under the Contract is \$6,729.76 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$6,800.00. Connie Sue Johnston is a codebtor on the Contract

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Chapter 13 Plan.

Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide Wells Fargo Financial Acceptance with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan

supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

### CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Respectfully Submitted,

Dated: September 13, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100



U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Christine Renae Larsen

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-41069-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

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United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor(s))  
Curtis K. Walker  
4356 Nicollet Ave. S.  
Minneapolis, MN 55409

(Trustee)  
Michael J Farrell  
PO Box 519  
Barnesville, MN 56514

(Debtor(s))  
Christine Renae Larsen  
8827 71st Street  
Clear Lake, MN 55319

(Co-Obligor)  
Connie Sue Johnston  
8705 71st Street  
Clear Lake, MN 55319

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 13, 2004

Signed: /e/ Bradley J. Halberstadt  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-41069-RJK

Chapter 13

Christine Renae Larsen,

Debtor(s).

***ORDER GRANTING  
MOTION FOR RELIEF FROM STAY***

---

The above-entitled matter came before the Court for hearing on Thursday, October 7, 2004 at the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Financial Acceptance to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 1997 Chevrolet Blazer, vehicle identification number 1GNDT13W7V2182345 in accordance with Minnesota law.

Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Kressel  
United States Bankruptcy Judge